

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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DONALD MONTGOMERY, ANDREW CARTER,
LOIS REID, KARL BELCHER, and "M.M.,"
as individuals and on behalf of all other persons
similarly situated,

Plaintiffs,

DECLARATION

14-CV-6709 (CJS)

-against-

ANDREW M. CUOMO, Governor of the State of New York,
ANN MARIE T. SULLIVAN, Commissioner of the New
York State Office of Mental Health, MICHAEL C. GREEN,
Executive Deputy Commissioner of the New York State
Division of Criminal Justice Services, JOSEPH D'AMICO,
Superintendent of the New York State Police, VINCENT
F. DEMARCO, Suffolk County Sheriff's Department; and
EASTERN LONG ISLAND HOSPITAL,

Defendants.

X

RUDOLPH M. BAPTISTE, an attorney duly admitted to practice law before this Court
and the courts of the State of New York, declares the following under penalty of perjury:

1. I am an Assistant Suffolk County Attorney associated with the office of DENNIS
M. BROWN, Suffolk County Attorney counsel for defendant the HON. VINCENT F.
DeMARCO, SUFFOLK COUNTY SHERIFF s/h/a the SUFFOLK COUNTY SHERIFF'S
OFFICE (collectively referred to a "defendant" or "County defendant"). In that capacity, I am
fully familiar with this file and submit this Declaration in support of the County defendants'
motion to dismiss the Complaint pursuant to Fed. R. Civ. P. 12 (b) (2), 12(b)(6) & 28 U.S.C. §§
1391 (b), 1406 (a) & 1404 (a).

2. A true and accurate copy of plaintiffs' Amended Complaint is annexed hereto as
Exhibit "A."

3. A true and accurate copy of maps and directions between the Suffolk County Sheriff's Office at 100 Center Drive, Riverhead, New York and the U.S. District Court for the Western District of New York at 1360 U.S. Courthouse, 100 State Street in Rochester, New York are annexed hereto as Exhibit "B."

4. For the reasons fully discussed in the accompanying memorandum of law, defendants seeks dismissal of the instant Complaint for failure to state a claim since plaintiff's suit in its present form is against DeMarco in his official capacity as the Suffolk County Sheriff. As courts within this circuit have consistently, such suits are appropriately addressed to the office and not the individual. Since the Suffolk County Sheriff's Office is a non-sueable entity as an arm of the municipal local government, plaintiff's claims truly lie with the County of Suffolk. Given this, plaintiff's Section 1983 suit for municipal *Monell* liability against Suffolk County is barred by the Second Circuit in *Vives v. City of New York*, 524 F.3d 346 (2008) as DeMarco's action in suspending plaintiff's pistol license pursuant to the New York Secure Ammunition & Firearms Enforcement Act of 2013 based on plaintiff's involuntary commission was mandated by a then presumptively valid and constitutional state statute.

WHEREFORE, it is respectfully requested that this Court grant the County defendants' motion to dismiss and for such other and further relief as the Court deems just and proper.

Dated: Hauppauge, New York
February 18, 2015

Respectfully submitted,

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